



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNR; MND; MNSD; FF

Introduction

This is the Landlord's application for a Monetary Order for unpaid rent and damages to the rental unit; to retain the security deposit in partial satisfaction of his monetary award; and to recover the cost of the filing fee from the Tenants.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Preliminary Matters

The Landlord testified that the Tenants paid some of the unpaid rent after he filed his Application on May 14, 2010. He amended his application on September 15, 2010, to reflect these payments. In his amended application, the Landlord seeks the following monetary award:

Unpaid rent, late fees and bank charges	\$351.00
Unpaid hydro charges	\$416.99
Unpaid oil charges	\$268.65
Garbage removal costs	\$55.00
Damage to the bathroom floor	\$685.00
Administrative costs to re-rent the rental unit	\$90.00
Recovery of filing fee	<u>\$100.00</u>
Total monetary claim	\$1,966.64

Issues to be Decided

- Is the Landlord entitled to a Monetary Order for unpaid rent and utilities; late fees; bank charges; administrative costs; and damages to the rental unit?

Background and Evidence

This tenancy started on August 1, 2009. A copy of the tenancy agreement was entered in evidence. The tenancy agreement was a term lease, due to expire on August 31, 2010. Monthly rent was \$1,620.00 per month, due the first day of each month. The Tenants paid a security deposit in the amount of \$810.00 on July 15, 2009. The Tenants moved out of the rental unit on April 25, 2010. The Landlord discovered that the Tenants had moved out on May 3, 2010 when he went to the rental unit after receiving the Tenants' written notice that they had moved.

The Landlord gave the following testimony and documentary evidence:

The Landlord testified that he re-rented the rental unit effective July 1, 2010.

The Landlord calculated the amount of unpaid rent and fees, as follows:

Loss of rent for May, 2010	\$1,620.00
Loss of rent for June, 2010	\$1,620.00
Late payment fee for May, 2010	\$25.00
Late payment fee for June, 2010	\$25.00
Bank charges for stop payment on May rent cheque	\$5.00
Bank charges for stop payment on June rent cheque	\$5.00
Subtotal	\$3,300.00
Less credit for paint costs as agreed between parties	-\$39.00
Less payment received from Tenants on May 7, 2010	-\$1,830.00
Less payment received from Tenants on June 2, 2010	-\$1,080.00
Balance owing	\$351.00

Under the tenancy agreement, the Tenants were responsible for 50% of “oil fills and hydro”, however during the Hearing the Landlord testified that the Tenants were to pay 25% of the hydro and 50% of the oil.

The Landlord submitted that the Tenants owe \$416.99 for their share of hydro costs. He testified that the hydro bills were on an equal payment plan, commencing on September 1, 2009. The Landlord provided a copy of an invoice for the hydro charges from September 1, 2009 to June 23, 2010, indicating a total usage of \$1,767.99 and a total paid in monthly installments of \$1,478.00, for a balance owing of \$480.05. The Landlord testified that the Tenants paid \$25.00 on July 22, 2010, which he has credited towards unpaid hydro.

The Landlord provided evidence that the oil tank was filled on January 12, 2010 and that he measured the oil tank at the end of the tenancy and there were 15 inches of oil remaining in the tank. The Landlord calculated the remaining oil to be 312 litres of oil. The Landlord provided a copy of the oil invoice dated January 12, 2010, which indicates a balance owing of \$846.19. The Landlord submits that the Tenant's share of the oil was half of that, or \$423.09. He credited the Tenants with a refund of \$154.44 (312 litres remaining/ 2 = 156 litres. 156 litres \$.99 per litre = \$154.44), and submitted that the Tenants' share of the oil consumption was therefore \$268.65 (\$423.09 - \$154.44).

The Landlord testified that the Tenants left some garbage at the rental unit, which had to be taken to the dump. The Landlord is seeking \$55.00 for the cost of removing the garbage from the rental unit. The Landlord testified he has misplaced the receipt for the dump fees.

The Landlord testified that the bathroom floor was damaged by the Tenants. He stated that there was some minor water damage to the floor when the Tenants moved in, but that the Tenants removed a guard that was affixed to the tub, allowing water to pool on the floor and seep under the linoleum, causing damage to the subfloor. The Landlord

provided a copy of an estimate for the cost of repairing the bathroom floor in the amount of \$685.00. The Landlord has not yet repaired the floor.

The Landlord submitted that the Tenants ended the tenancy before the term and therefore he is seeking administrative costs for re-renting the rental unit in the amount of \$90.00. The Landlord testified that he advertised the rental unit "steadily" at the University, on Craig's List and a local website after the Tenants moved out and checked daily for suitable tenants. The Landlord testified that it cost \$10.00 to advertise at the University, and he is also seeking compensation for his time to show to the unit to three prospective tenants before he found a suitable tenant.

The Landlord testified that he filed his Application on May 14, 2010, because he wanted to be sure to file against the security deposit within the 15 days required by Section 38(1) of the Act. The Landlord testified that he was not certain if the Tenants would be paying the Landlord for his loss of rent and therefore he included those amounts (from May, 2010 to and including August, 2010) in his claim. This brought his claim to an amount over \$5,000.00, so he was required to pay a filing fee of \$100.00. The Landlord is seeking to recover the full amount of the filing fee from the Tenants.

The Tenants gave the following testimony and documentary evidence:

The Tenants agreed that they did not end the tenancy in accordance with the provisions of the Act. The Tenants' agent submitted that she paid her daughters' share of the rent for June, 2010 and that the remaining amount is owed by the male Tenant.

The Tenants' agent testified that she phoned the Landlord on May 7, 2010, and advised him that the Tenants would pay for loss of rent for the month of May, 2010. She stated that the Landlord that agreed to keep them informed with respect to when the rental unit was re-rented, so they would know whether they should pay loss of rent for the remaining of the term. She told the Landlord that she would be making these payments directly into his account. The Tenants therefore placed a stop payment on the

remainder of the postdated cheques. The Tenant's agent testified that she deposited \$1,830.00 into the Landlord's bank account within hours of talking to the Landlord on May 7, 2010.

The Tenants' agent testified that the Landlord advised her during the telephone call that the Tenants owed hydro in the amount of \$41.50 per month for the months of January to May, 2010. She stated that the Landlord did not say anything about outstanding oil bills and that she was unaware of this charge until she received copies of the Landlord's evidence.

The Tenants' agent testified that she had not heard from the Landlord with respect to whether he had re-rented the rental unit for June, 2010, so she emailed the Landlord on June 2, 2010. The Landlord indicated in a return e-mail that the hydro bill for the month of June was \$150.00. A copy of the email correspondence was entered in evidence.

The Tenants' agent provided evidence which included a breakdown of what was paid into the Landlord's account, as follows:

Date paid	Details of payment	Amount paid
May 7, 2010	\$1,620.00 for May's rent	
	\$210.00 for hydro @42.00 per month (Jan – May, 2010)	\$1,830.00
June 2, 2010	Daughters' share of June's rent (\$1,620.00 x 2/3)	\$1,080.00
July 22, 2010	Daughters' share of June's hydro (\$150.00 in total per Landlord's email). \$150.00 x 25% (all three Tenants' share) = \$37.50. \$37.50 x 2/3 = \$25.00	\$25.00

The Tenants' agent did not take into consideration the \$39.00 credit that the Landlord provided for the paint.

A copy of the bank transaction records were entered in evidence

The Tenants accepted some responsibility for the damage to the bathroom floor, but submitted that there was pre-existing damage and that the Tenants informed the

Landlord early on in the tenancy that they had concerns about the poor caulking job around the tub.

Analysis

Co-tenants are jointly and severally responsible for damages or unpaid rent. In other words, the Landlord can claim against any or all of the Tenants. It is up to the Tenants to apportion between themselves any amount owing to the Landlord.

The Landlord made an arithmetical error in his calculations with respect to his claim for unpaid rent and fees. Using the Landlord's figures, the balance owing is actually \$561.00, not \$351.00 as claimed. The Landlord included late payment fees and bank charges in his calculation for the amount owing. For the reasons stated above, I prefer to utilize the Tenant's calculations with respect to rent owed to the Landlord. I find that the Landlord is entitled to loss of rent in the amount of \$540.00 for the month of June, 2010 (\$1,620.00 - \$1,080.00 paid on June 2, 2010).

The tenancy agreement contains a provision for late fees and bank charges. Based on the verbal testimony and documentary evidence provided, I find that the Landlord is not entitled to late fees and bank charges for the month of June, 2010. The Tenants were only required to pay loss of rent for the months the Landlord could not re-rent the rental unit. The Landlord did not advise the Tenants that the rental unit had not been re-rented until June 2, 2010. I find that the Landlord is entitled to late charges and bank fees for the month of May, 2010.

The Landlord's calculations for unpaid hydro are very confusing and I find that the amount he has calculated as owing is unsupportable. Based on the verbal testimony and documentary evidence provided by the parties, I find that the hydro has been paid in full, with the exception of \$12.50 for the month of June, 2010. I allow the Landlord's claim for unpaid hydro in the amount of \$12.50.

The tenancy agreement indicates that the Tenants agreed to pay 50% of the oil bills. Based on the Landlord's documentary evidence, I allow the Landlord's claim in the amount of \$268.65 for the Tenants' share of oil.

During the Hearing, the male Tenant testified that he moved out of the rental unit shortly after the female Tenants, and that he had left some garbage. The Landlord did not provide sufficient evidence of the cost of removing the garbage, however I am satisfied that he is entitled to something for this cost, and award the Landlord a nominal amount of \$25.00.

I find that both parties are partially responsible for the damage to the bathroom floor. The Landlord agreed that there was a small discoloration around the tub when the Tenants moved into the rental unit. The Landlord did not provide any evidence that he investigated the reason for the discoloration, which may have corrected the problem before the Tenants moved in. The Landlord did not recall any conversations about inadequate caulking around the tub and the Tenants did not provide the Landlord with written notification of their concerns with respect to the caulking. The Tenants did not advise the Landlord that the guard had come off the bath tub. Therefore, I allow the Landlord's claim for repairs to the bathroom floor in the amount of half of the estimated cost of repairs ($\$685.00 / 2 = \342.50).

The Tenants ended the tenancy early and the Landlord is entitled to costs for re-renting the rental unit. I find the Landlord's application for \$90.00 in administrative costs to be fair and allow this portion of his claim.

The parties agreed that the Landlord had credited the Tenants with \$39.00 for paint that they purchased during the tenancy. Therefore, I have deducted \$39.00 from the Landlord's monetary award.

Pursuant to Section 72(2)(b) of the Act, the Landlord may apply the security deposit and accrued interest towards partial satisfaction of his monetary award.

The Landlord has been partially successful in his application and is entitled to recover half of the cost of the filing fee from the Tenants.

The Landlord has established a monetary claim as follows:

Loss of rent	\$540.00
Late charges and bank fees for May, 2010	\$30.00
Unpaid hydro	\$12.50
Unpaid gas	\$268.65
Garbage removal	\$25.00
Repairs to bathroom floor	\$342.50
Administrative costs to re-rent the rental unit	\$90.00
Recovery of half of the filing fee	\$50.00
Less credit of \$39.00 for paint	<u>-\$39.00</u>
Subtotal	\$1,319.65
Less security deposit	<u>- \$810.00</u>
TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF	\$509.65

Conclusion

I hereby provide the Landlord with a Monetary Order in the amount of \$509.65 against the Tenants. This Order must be served on the Tenants and may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 05, 2010.
